

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LILIA MIRCHEVA, et al.,

Plaintiffs and Appellants,

v.

ANA LUZ GONZALEZ,

Defendant and Respondent.

B218025

(Los Angeles County  
Super. Ct. No. BC369646)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
John Shepard Wiley, Judge. Affirmed.

The Dodell Law Corporation, Herbert Dodell, Julius Wachs and Gerald J.  
Miller for Plaintiffs and Appellants.

Calendo, Puckett, Sheedy and DiCorrado, Kelly Hara-Tadaki and Kim B.  
Puckett for Defendant and Respondent.

## INTRODUCTION

This lawsuit arises out of a car accident in which a car driven by defendant Ana Luz Gonzalez collided with a car driven by plaintiff Raitcho Vladimirov. Vladimirov's wife, plaintiff Lilia Mircheva, was a passenger in his vehicle. Plaintiffs sued Gonzalez for negligence, contending she caused the accident when she attempted to make a left turn and struck their car, causing Vladimirov to lose control and drive onto a sidewalk, striking and killing a pedestrian. Gonzalez asserted that the accident was in fact caused by Vladimirov's driving at an excessive speed. At trial, over plaintiffs' objection, Gonzalez's accident reconstruction expert testified that a dent in the roof of plaintiffs' car was caused by the pedestrian's body striking it, thus tending to show that Vladimirov's speed was excessive. The jury returned a defense verdict for Gonzalez.

On appeal, plaintiffs contend that the trial court erred by permitting Gonzalez's expert to testify that the pedestrian's body hit the roof. According to plaintiffs, the expert's testimony was factually unsupported, and was also unduly inflammatory. We conclude that plaintiffs have forfeited these arguments on appeal by failing to provide a summary of the significant facts. In the alternative, we conclude that the expert's opinion was factually supported and not unduly prejudicial. Moreover, because we conclude that the challenged testimony was properly admitted, we also reject plaintiffs' contention that the trial court deprived them of a fair trial by improperly restricting their counsel's closing argument and making purportedly prejudicial statements to the jury with regard to the challenged expert testimony. Accordingly, we affirm the judgment.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *The Accident*

The car accident occurred at the intersection of La Brea Avenue and Sunset Boulevard in Los Angeles, during morning rush hour. Plaintiffs were traveling southbound on La Brea, and Gonzalez was driving northbound on La Brea. As Gonzalez was attempting to turn left onto Sunset, the front of her car sideswiped the left rear section of plaintiffs' car. Plaintiffs' car then careened onto the sidewalk at the southwest corner of the intersection, hitting two light poles, newspaper stands, and also a pedestrian, who died as a result of her injuries.

Plaintiffs sued Gonzalez for negligence, seeking recovery for their personal injuries and property damage resulting from the car accident. Gonzalez filed an answer in which she contended that the accident resulted from Vladimirov's negligence.

### *The Motion in Limine*

Before trial, plaintiffs filed a motion in limine requesting the court exclude evidence that the accident resulted in the death of a pedestrian, that Vladimirov was arrested and charged with vehicular manslaughter, and that the arrest resulted in a criminal prosecution in which Vladimirov was found not guilty. They argued that the evidence should be excluded under Evidence Code section 352 because it was irrelevant, and because its probative value would be outweighed by its prejudicial effect.

Gonzalez filed written opposition, arguing that the physical evidence regarding the pedestrian's contact with plaintiffs' car was relevant to demonstrate the excessive speed at which Vladimirov was traveling at the time of the collision. Gonzalez indicated that although she would offer witness testimony that plaintiffs'

car entered the intersection at a high rate of speed and against a red traffic signal light, the physical evidence concerning the impact of plaintiffs' car on the pedestrian, and the extent and location of the damage caused to plaintiffs' car by the impact of the pedestrian's body, would be more conclusive evidence regarding plaintiffs' speed.

The court initially ruled that Gonzalez's expert would be limited to testifying that an object weighing about 100 pounds caused the damage to the roof of plaintiffs' car. No mention was to be made of the pedestrian's death, her impact with the car, or the criminal prosecution. The court indicated that it would revisit the issue at a later time.

After testimony was taken for a few days, the trial court stated that it viewed the issue differently and had reconsidered its ruling on the motion in limine. The court noted "that in trying to reconstruct this accident about which there's not very clear testimony from anybody," "the accident reconstruction testimony assumes more corresponding importance." The court ruled that it would continue to preclude any testimony regarding the pedestrian's injuries or her death. But it would permit the defense expert to draw inferences about plaintiffs' speed, based on the depth and configuration of the dent, which the expert surmised was caused by the person who was known to have been hit in the accident. The court observed that "whether this dent in the roof creates a valid inference or not is at the heart of causation in this case." "[T]he physics of this case call this physical phenomenon into issue as to whether there's liability or not." The trial court instructed defense counsel to treat the information "in an antiseptic way."

Plaintiffs' counsel argued that there was no witness testimony about seeing a body landing on the roof of plaintiffs' car, so there was no foundation for the defense expert to surmise that anything landed on the roof. He requested that an

Evidence Code section 402 hearing be held before the expert was allowed to testify that the pedestrian's body caused the dent in the roof. The trial court denied the request.

### *The Defense Expert's Testimony*<sup>1</sup>

At trial, Gonzalez called Peter Burkhard, an accident reconstruction expert, who testified that based on his investigation, he believed that at the time of the initial contact between plaintiffs' and defendant's cars, Gonzalez's car was traveling at about 5 miles per hour, and plaintiffs' car was traveling at 52 to 55 miles per hour, in a 30 mile per hour zone. He reached this conclusion based on various pieces of physical evidence, photographs, and eyewitness statements. Although the precise location of the initial impact between Gonzalez's car and plaintiffs' car was not known, the impact clearly occurred in the northwest quadrant of the intersection. Plaintiffs' car then continued through the intersection and entered the sidewalk at a known location, made contact with a light pole and the pedestrian, then with newsstands, and finally with another pole, before coming to rest in a known location. Skid marks showed the actual dynamics of the car as it rotated from one collision point to another. Burkhard calculated the friction between plaintiffs' car and the road and sidewalk as the car spun to a stop. He also examined crash data on plaintiffs' car to determine the amount of energy that would be expended in developing the level of crush or deformation observed on plaintiffs' car. He calculated the energy loss caused by plaintiffs' car striking each of the various objects, which helped to indicate the speed at which the car was

---

<sup>1</sup> We note that the appellants' opening brief does not provide a summary of the significant facts. It includes only a cursory indication of the content of the defense expert's testimony.

traveling when it entered the sidewalk. The fact that Mircheva, the passenger in Vladimirov's car, suffered an ankle fracture – typically caused in a car accident by a high-speed (at least 20 miles per hour) frontal impact with a stationary barrier in the area in which the person is sitting--also helped to indicate the speed at which the car was moving when the front passenger-side portion of the car hit the second light pole before coming to rest about 15 feet from the pole. By considering the various energy loss terms, Burkhard calculated the speed plaintiffs' car had to be traveling as it entered the sidewalk was about 52 miles per hour. The collision with Gonzalez's car would have caused a two to three mile per hour speed loss, so the speed of the plaintiffs' car in the intersection would have been in the range of 52 to 55 miles per hour.

Burkhard further testified that he considered the severe deformation in the roof panel of plaintiffs' car, which he said was "a very key element" in determining the speed of plaintiffs' car. He stated with certainty that the pedestrian's body caused the damage to the roof. He did not believe anything other than the pedestrian could have caused the roof deformation because the two light poles remained intact, and the newsstands were impacted by the side of the car, not the front. Rescue personnel used "the jaws of life" to cut off the right front door and the hinge pillar of the car, but left the roof pillar intact, indicating to Burkhard that the roof deformation was not caused by the use of rescue equipment. "By elimination, one could infer and deduce that [the roof damage] was from the pedestrian. But if you look at actual data, this is . . . the conclusion you would arrive at." The data to which he referred was the body of research conducted over the last 40 years that analyzed pedestrian impacts with cars. That research discussed the types of speeds associated with different portions of the vehicle being struck by a pedestrian. To get the type of deformation of the roof panel seen

here, the research indicated a speed in excess of 50 miles per hour would be necessary. If the speed of the car were slower, the pedestrian would have landed on the windshield. Although he had not seen any writings, charts, letters, witness statements or anything else stating a pedestrian hit the roof of plaintiffs' car, Burkhard said there was no doubt in his mind that the dent in the roof of the car was caused by the pedestrian striking it.<sup>2</sup>

### *Plaintiffs' Counsel's Closing Argument*

Plaintiffs' counsel argued to the jury that Gonzalez caused the accident by using a cell phone and failing to yield the right of way as she attempted to turn left.<sup>3</sup> Counsel argued that there was no evidence that Vladimirov ran a red light, or that he was driving at a dangerously high speed, although counsel acknowledged that Vladimirov was exceeding the speed limit to some extent when the accident occurred.

Plaintiffs' counsel commented on Burkhard's testimony that plaintiffs' car "had to be traveling at least 50 miles an hour, because there was a human body that landed on the roof. Did you hear anything about any of that here? Was there a single piece of evidence? In fact, I asked Burkhard. I said, was there a witness?

---

<sup>2</sup> While Burkhard was testifying, a juror wrote a note to the court asking if a pedestrian was hit during the accident, and how many people were taken to the hospital as a result of the accident. The court left it to counsel to work those matters into their questioning as they saw fit, bearing in mind that the pedestrian's involvement was not to be emphasized.

<sup>3</sup> On appeal, plaintiffs refer to cell phone records purportedly introduced into evidence. In support, they cite only to plaintiffs' counsel's argument. They fail to cite any portion of the record showing that the cell phone records were admitted into evidence, and, in any event, the records are not included in the record on appeal.

Was there a document? Was there a letter? Was there a report? Was there a chart? Was there anything to indicate that to you? No. He said no.”

Defense counsel objected and at sidebar asked for a curative instruction confirming that a pedestrian was involved in the accident. He noted that plaintiffs’ counsel made it seem that Burkhard was the only one talking about a pedestrian. The court agreed that plaintiff’s counsel had taken unfair advantage of the court’s ruling: “I’ve never encountered such a pure form of asking in advance that the record be limited and then using in closing argument the very request on limitation to imply that the other side’s case is without foundation.” The court continued: “You’re stuck with what you asked for, and now you’re seeking in a very unfair way to suggest that the limitation that you imposed on the evidence shows the other side is failing to present a logical case.” Plaintiffs’ counsel responded that “[t]here was no evidence in the case that she landed on the roof. Everything I showed you before was that – except him, there was no foundation for his comment.” The court said, “The issue now is not whether there’s evidence that there was a human body that landed on the roof. The evidence is whether there was a human body at all.” The court gave counsel the choice to either clarify that he was not suggesting there was no human body at all, or the court would clarify that there was a human body involved in the accident. Plaintiffs’ counsel said he would concede a pedestrian was involved in the accident, “[b]ut there is no evidence she landed on the roof.”

Plaintiffs’ counsel then told the jury that “sometimes we get a little over exuberant,” and that he did not mean to mislead them. “We are not saying to you that there wasn’t a pedestrian involved in this accident. We acknowledge there was a pedestrian involved in this accident. What we do say is that there is no evidence anywhere in this record that supports Mr. Burkhard’s conclusion that that



person ended up on the roof of this car.” Counsel continued, arguing that Burkhard “was straining and stressing to find some kind of way of building up a speed factor that wasn’t really there . . . , the bottom line was that he didn’t really have anything. So he reached out and said, well, one of the reasons that I believe that he was going 50 miles an hour is because there was something on the roof. But there wasn’t anything on the roof, according to the testimony.” Defense counsel objected again, and stated to the court at sidebar: “The court has not allowed any other witness or any other evidence to come in through any source of any observations involving where that witness [*sic*] was. There were witnesses that saw that individual on the vehicle, absolutely. So now he’s saying the only one that’s saying that is Burkhard. . . . I need a curative instruction that the court ordered that no one other than the experts would be allowed to talk about observations regarding the pedestrian.”

The court instructed the jury: “I have excluded evidence about a pedestrian in this case because it’s irrelevant to the dispute here. The one exception has been for experts analyzing, as a matter of a claim of physics, as to whether there’s a dent and what that might show about the speed of the car. So before trial, I asked that everybody omit mention of the pedestrian or a pedestrian. So it was in light of that instruction that this record was developed in front of you.”

Plaintiffs’ counsel resumed his closing argument, apologizing to the jury if he had said anything that violated any of the court’s rulings.

### *The Jury Verdict, and the New Trial Motion*

The jury returned a verdict for the defense, finding that Gonzalez was not negligent with respect to the accident. Accordingly, the court entered judgment in favor of Gonzalez.

Plaintiffs brought a motion for new trial, arguing that they were deprived of a fair trial, and that the court made an error of law in admitting Burkhard's testimony that his estimate of the speed of plaintiffs' vehicle was based in part on the fact a human body landed on the roof of the car. Plaintiffs also assigned as error the court's admonishment of plaintiffs' counsel during closing argument.

The trial court denied the motion.

This timely appeal followed.

## **DISCUSSION**

### **I. Inadequate Statement of Facts Forfeits the Argument**

#### **That the Expert Opinion Lacked Foundation and That the Court's Comments Prejudiced Plaintiffs**

On appeal, we begin with the presumption that the trial court's judgment is correct and supported by substantial evidence. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Consistent with this presumption, we draw all inferences in favor of the judgment unless the record expressly contradicts them. (*Ibid.*) An appellant must affirmatively demonstrate grounds for reversal because trial court error will not be assumed. (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 549.)

In order to demonstrate error on appeal, among other requirements, a party must "[p]rovide a summary of the significant facts limited to matters in the record" in his or her appellant's opening brief. (Cal. Rules of Court, rule 8.204(a)(2)(C).) All briefs on appeal must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(C).) Particularly where, as here, plaintiffs contend that the court erred by allowing the defense expert to state an opinion that

was lacking in factual foundation, plaintiffs were required to provide a complete summary of the significant facts bearing on the issue, with citations to the record on appeal. They failed to do so. Plaintiffs' summary of Burkhard's relevant testimony is cursory and incomplete, and provides no context whatsoever.

Plaintiffs do not summarize the testimony of their own expert, even with regard to his testimony about the deformation of the roof of plaintiffs' car. They mention their expert in a footnote, but provide no citation to the reporter's transcript to direct us to his testimony. In the same footnote and elsewhere in their brief, plaintiffs make assertions about what information the police report did or did not contain, but the police report is not in the record for us to examine.

"Counsel is obligated to refer us to the portions of the record supporting his or her contentions on appeal." (*Sharabianlou v. Karp* (2010) 181 Cal.App.4th 1133, 1149.) We have no duty to search the record for supporting evidence, and we may disregard any factual contention not supported by a proper citation to the record. (*Ibid.*; *Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379.) "Moreover, an attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent. [Citation.]" (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Here, plaintiffs do not provide a summary of Burkhard's extensive testimony to support the claim of error. They also fail to provide a summary of the trial evidence showing that, if Burkhard's testimony was improperly admitted, such error was prejudicial. They have therefore forfeited their claim of error in the admission of Burkhard's testimony.

Moreover, while plaintiffs provide a relatively detailed factual recitation of the trial court's allegedly improper comments, they do so, as we have discussed, without providing a factual summary regarding the underlying evidentiary issue

which led the court to make the rulings and statements to which plaintiffs now refer on appeal. They therefore have forfeited any claim of error in the trial court's conduct.

Nonetheless, in the alternative, we briefly address the issues on their merits, so as to demonstrate that the trial court's rulings and conduct were entirely proper.

## **II. The Expert's Opinion was Properly Admitted**

### *A. The Evidence Was Factually Supported*

Plaintiffs challenge Burkhard's expert testimony on the basis that, because no one saw the pedestrian land on the roof, there could be no factual foundation for his opinion that the roof indentation was indicative of the speed of plaintiffs' car.<sup>4</sup> But direct observation was not the only means by which an adequate foundation could be established to support the notion that the indentation in the roof of the plaintiffs' car occurred when the pedestrian landed on it.

Burkhard examined the accident reports and the photographs of plaintiffs' car, and reached opinions regarding which objects caused the various deformations in the car. The objects which undisputedly made contact with plaintiffs' car included Gonzalez's car, a light pole, a pedestrian, newsstands, and a second light pole. Because the two light poles remained upright and intact, and Gonzalez's car and the newspaper stands made contact with the sides of plaintiffs' car, it could reasonably be inferred that the sole remaining cause for the deformation in the roof was the pedestrian impact. Thus, the physical evidence here, and the plausible inferences which could reasonably be drawn from the physical evidence, fully

---

<sup>4</sup> Because plaintiffs successfully persuaded the trial court to preclude anyone other than the experts from mentioning the pedestrian, we cannot determine what other potential evidence there might have been on the subject. That information is obviously not in the record by way of testimony or as exhibits introduced into evidence.

supported the expert's opinion that the pedestrian's body caused the roof deformation. Having reasonably concluded that the roof deformation was consistent with the pedestrian impact, Burkhard properly testified that numerous studies on which he relied indicated that a pedestrian impact on a car's roof indicated a vehicular speed of over 50 miles per hour. Plaintiffs did not dispute the accuracy or reliability of those studies.

Plaintiffs argue on appeal that the dent in the roof was explainable other than by the pedestrian landing on the roof of the car. According to plaintiffs, the police report, which is not in the record, stated that the fire department removed Mircheva from the front passenger seat using "the jaws of life." Also, plaintiffs state that their expert, Stephen Haverkamp, testified that his inspection of the car showed deformities on the car due to such use, although plaintiffs do not cite to the portion of the record where such testimony may be found. Indeed, as noted earlier, plaintiffs do not provide any summary of their expert's testimony. Our review of the record shows Haverkamp instead testified that he identified where Gonzalez's car, the light poles, and the newsstands made contact with plaintiffs' car. But he had no opinion what object caused the deformation in the roof of plaintiffs' car. He testified that it was possible the indentation could have been caused by the rescue equipment, but he could neither deny nor confirm that such was the case.

In any event, any dispute between the experts over whether the cause of the roof deformation could be identified was for the jury to determine. It is not a basis on which to challenge the admission of Burkhard's testimony.

#### *B. The Evidence Was Relevant and Not Unduly Prejudicial*

The speed at which Vladimirov was driving was highly disputed. Eyewitnesses can rarely identify with precision the speed at which a car is

traveling and therefore, as the court observed, the testimony from the accident reconstruction experts was highly relevant. After granting the plaintiffs' motion in limine to exclude references to the criminal matter and the death of the pedestrian, the court properly reconsidered the admissibility of that part of the expert's testimony when it became clear that it was highly relevant to a disputed issue.

The manner in which the evidence pertaining to the pedestrian's involvement in the accident was introduced was also entirely proper. It was not discussed in an unduly prejudicial or inflammatory way. The trial court did everything possible to keep it from becoming sensationalized while still allowing defendant to present relevant evidence to support her theory of the case. As the court observed, it would have been odd and drawn even more of the jury's attention if the experts had been required to refer to an unidentified object causing the roof deformation. It would have caused the jury to speculate and make more of the matter because of the peculiar secrecy surrounding it.

### **III. No Error In the Trial Court's Statements to the Jury**

Having concluded that the trial court properly allowed Burkhard to testify about the cause and import of the roof deformation, and also properly controlled the manner in which the information was shared with the jury, we also conclude that the trial court's admonition of counsel and statements to the jury were appropriate.

Plaintiffs' counsel was convinced (erroneously) that there was no foundation for the testimony, and argued to the jury accordingly. But in so doing counsel made it sound as if he was disputing that a pedestrian was involved at all, and the defense was entitled to have that misimpression corrected. The court's critical comments to plaintiffs' counsel were made at sidebar, out of the hearing of the

jury. Furthermore, the court merely informed the jury that it had excluded any evidence about the pedestrian other than the experts' analysis of whether there was a dent and what that might show about the speed of the car. There was no error in the court's limiting plaintiffs' counsel's arguments, and no unfair or prejudicial statements were made by the trial judge.

### **DISPOSITION**

The judgment is affirmed. Costs on appeal are awarded to Gonzalez.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.